

PUBLIC HEALTH COUNCIL

A regular meeting of the Massachusetts Department of Public Health's Public Health Council was held on Tuesday, March 21, 2006, 10:00 a.m., at the Charles F. Hurley Building (Minihan Hall), 19 Staniford Street, Boston, Massachusetts. Public Health Council Members present were: Chair Paul Cote, Jr., Commissioner, Department of Public Health, Dr. Clifford Askinazi, Mr. Manthala George, Jr., Ms. Maureen Pompeo, and Ms. Janet Slemenda. Absent Members were: Ms. Phyllis Cudmore, Mr. Albert Sherman, Mr. Gaylord Thayer, Jr., and Dr. Martin Williams. Also in attendance was Attorney Donna Levin, General Counsel.

Chair Cote announced that notices of the meeting had been filed with the Secretary of the Commonwealth and the Executive Office of Administration and Finance.

The following members of the staff appeared before the Council to discuss and advise on matters pertaining to their particular interests: Ms. Esther Kang, Program Coordinator and Dr. Bruce Cohen, Director, Division of Research and Epidemiology, Center for Health Information, Statistics, Research, and Evaluation and Dr. Paul Dreyer, Associate Commissioner, Center for Quality Assurance and Control.

STAFF PRESENTATION: "RELEASE OF THE RESULTS OF THE ANNUAL BEHAVIORAL RISK FACTOR SURVEILLANCE SURVEY", By Esther Kang, Program Coordinator and Bruce Cohen, Director, Division of Research and Epidemiology, Center for Health Information, Statistics, Research, and Evaluation:

Dr. Bruce Cohen, Director, Division of Research and Epidemiology, made introductory remarks and then Ms. Esther Kang, Program Coordinator, made a slide presentation to the Council. The BRFSS is a random digit dial telephone survey of Massachusetts adults, 18 years and older. This is a joint collaboration between the Centers for Disease Control and 50 states, including Washington, DC and three territories, Guam, Puerto Rico, and the U.S. Virgin Islands. It has been conducted in Massachusetts since 1986. Some highlights from the report, "A Profile of Health Among Massachusetts Adults, 2004" are noted below:

- 12% of Massachusetts adults surveyed reported their health was either fair or poor.
- 9% of Massachusetts adults reported that they had 15 or more days of poor mental health in the past 30 days.
- 87% of Massachusetts adults surveyed reported that they had a personal health care provider.
- 8% of Massachusetts adults reported that they had not seen a doctor at some point in the past year due to cost.
- 78% of Massachusetts adults surveyed reported that they had been to a dentist or dental clinic in the past year.

- 19% of Massachusetts adults surveyed reported that they were current smokers.
- 2% of Massachusetts adults were heavy smokers (smoking more than 20 cigarettes per day).
- 60% of Massachusetts smokers surveyed had stopped smoking for one day or longer in the past 12 months because they were trying to quit.
- 32% of Massachusetts smokers were planning to quit in the next 30 days.
- 75% of Massachusetts adults surveyed reported living in a household where smoking is not allowed anywhere.
- 69% of Massachusetts adults supported a ban on smoking in restaurants.
- 17% of Massachusetts adults surveyed reported binge drinking at some point in the past month.
- 6% of Massachusetts adults surveyed reported heavy drinking in the past month.
- 55% of Massachusetts adults surveyed were overweight based on their reported height and weight (BMI =25).
- 18% of Massachusetts adults were obese based on their reported height and weight (BMI = 30).
- 80% of Massachusetts adults surveyed reported some form of leisure time physical activity over the past month.
- Among adults surveyed ages 50-64 years, 41% reported having a flu shot in the past year.
- 66% of adults ages 65-74 years and 75% of adults ages 75 years and older reported having a flu shot in the past year.
- Among adults ages 65 and older, 65% reported ever having a pneumonia vaccination.
- 37% of Massachusetts adults surveyed reported having a sunburn within the past 12 months.
- 6% of Massachusetts adults surveyed reported that they had ever been told by a doctor that they had diabetes.
- 15% of Massachusetts adults surveyed reported that they had ever been told by a doctor that they had asthma.

- 10% of Massachusetts adults reported that they currently have asthma.
- 20% of Massachusetts adults surveyed reported having a disability.
- 5% of Massachusetts adults reported that they had a disability that caused them to need help with routine activities.
- Among adults surveyed age 50 and older, 34% reported ever having had a blood stool test using a home kit to determine if their stool contained blood.
- Among adults age 50 and older, 54% reported having had a sigmoidoscopy or colonoscopy in the past five years.
- 56% of Massachusetts men surveyed ages 50 and older reported having a prostate-specific antigen (PSA) test in the past year.
- 63% of Massachusetts men age 50 and older reported having a digital rectal exam (DRE) in the past year.
- Among women surveyed ages 40 years and older, 83% reported having a mammogram in the past two years.
- Among women age 40 years and older, 87% of women reported having a clinical breast exam in the past two years.
- Cervical Cancer Screening: 86% of Massachusetts women surveyed reported having a pap smear in the past three years.
- 24% of women surveyed ages 18-44 who were currently pregnant or had been pregnant in the past 5 years reported the pregnancy had been unplanned.
- 88% of Massachusetts women ages 18-44 reported that they or their partners use some form of birth control.
- Among adults surveyed ages 18-64, 46% reported ever having been tested for HIV.
- 13% of adults ages 18-64 reported that they had been tested for HIV in the past year.
- 56% of Massachusetts adults surveyed reported ever having used an illicit drug.
- 8% of Massachusetts adults reported having used an illicit drug in the past 30 days.
- 12% of Massachusetts adults surveyed reported that firearms were kept in or around their homes.

In closing, Ms. Kang said in part, “Overall, Massachusetts is doing better than the U.S. but we have a way to go, to meet Healthy People 2010 goals. We need to maintain vigilance to reduce racial and ethnic, educational, geographic and gender disparities for these goals. BRFSS offers historical trends in health risk and behaviors and it provides insight and direction for program developing and targeting of services...”

A brief discussion followed, whereby Council Member George asked whether “program supervisors are held accountable for using the data effectively to really change behavior.” Mr. George noted that Department does a great job collecting the data. Dr. Cohen said in part, “The programs have used our data enormously and it helps them set target goals and identify areas of intervention.”

Chair Cote added, “If nothing else, it provides a baseline for us to measure ourselves against and I agree with Bruce that sometimes the hindsight in looking at where we drive that stake in the ground...Many of them do seem unrealistic [2010 Healthy People Goals]; but nonetheless, we are really measuring ourselves from where we have been, and what progress we are making. I think that is what our focus has to be.”

No vote/Information Only

REGULATION: REQUEST FOR FINAL PROMULGATION OF EMERGENCY AMENDMENTS TO 105 CMR 100.000: DETERMINATION OF NEED (NURSING HOME FILING DATES):

Dr. Paul Dreyer, Associate Commissioner, Center for Quality Assurance and Control, presented the amendments to 105 CMR 100.000 to the Council. Dr. Dreyer said in part, “...We are asking the Council for approval of amendments to Determination of Need Regulations that govern filing dates for nursing homes. These regulations were promulgated on an emergency basis on January 27, 2006 and need to be promulgated following the public hearing in order for the emergency regulations not to expire.”

Dr. Dreyer, continued, “The regulations that were presented to the Council in January do three things. They move the next filing date for new nursing home beds to 2010. They remove the expiration date for previously approved replacement and renovation projects so that those projects would not expire and they allow so-called BANYL beds (Beds Approved Not Yet Licensed) to expire.”

Regarding additional nursing home and rest home beds, Staff’s memorandum to Council noted that “the nursing home industry has experienced dramatic changes. The development of assisted living has reduced demand for lower acuity services and thousands of beds have closed. In spite of these changes, occupancy rates have remained constant, and age-specific utilization rates have declined. Department projections show a surplus of beds through 2010. The Department therefore proposes amendments to 105 CMR 100.302(D) that the filing date be moved from May 1, 2006 to May 1, 2010.”

Staff noted further that at the January Public Health Council meeting “a question was raised regarding the current expiration date of January 1, 2007 for unimplemented DoNs for new nursing homes, otherwise known as BANYLs (beds approved but not yet licensed). Following discussion, the decision was made to leave the expiration date as it currently exists but to solicit testimony during the public comment hearing on the retention of the January 1, 2007 expiration date. The Department held the public comment hearing on March 1, 2006. Arguments for once again extending the expiration date are that the holders want to maintain flexibility and the ability to react to unforeseen market factors. In fact, however, no activity has taken place since the Department last extended the expiration date. The further removed from the original approval, the more circumstances change and the less likely it becomes that the project in its originally-proposed form would remain viable. At this point in time, the Department finds no compelling reason to continue to grandfather proposals for ‘new’ projects that are at least ten years old. The projects in question were approved to meet a need for beds that no longer exists. If need for beds develops in the future, these and other applicants will have an opportunity to apply at that time. Because the Department is simply leaving existing language, rather than imposing an arbitrary or unforeseen expiration date on previously open-ended projects, the Department does not find merit in any argument based on property rights or constitutional issues. The Department is taking no new action but rather declining to further amend the relevant section of the regulation. Staff is requesting Public Health Council approval to make permanent the emergency amendments and leave in place the existing expiration date for BANYLs.” A brief discussion followed and Ms. Pompeo made the motion to approve staff recommendation.

After consideration, upon motion made and duly seconded, it was voted unanimously to approve the **Request for Final Promulgation of Emergency Amendments to 105 CMR 100.000: Determination of Need Filing Dates and leave in place the existing expiration date for BANYLs**; and that a copy be attached and made a part of this record as **Exhibit No. 14, 853**; and that a copy of the amendments be forwarded to the Secretary of the Commonwealth. A notice of compliance will be filed with the Secretary of the Commonwealth, which will make the emergency amendments permanent with an effective date of January 27, 2006.

The meeting adjourned at 11:10 a.m.

Paul J. Cote, Jr., Chair

LMH/lmh